

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

ACE MOTOR ACCEPTANCE CORP.)
)
)
vs.) Civil Action No. 3:18-CV-630-KDB
)
)
MCCOY MOTORS, LLC, et al.)
)
_____)

MOTION FOR MODIFICATION OF PRELIMINARY INJUNCTION
AND TO COMPEL PLAINTIFF/DEBTORS TO COMPLY OR SHOW CAUSE

COME NOW the Defendants McCoy Motors, LLC, Robert McCoy, Jr., and Misty McCoy, and move this Court to modify the terms of the Order Granting Motions for Preliminary Injunction (the “Preliminary Injunction”) entered on August 1, 2018 and to compel the Plaintiff/Debtors to comply with the terms of both the Order Concerning Interim Servicing of Accounts of Vehicle Buyers (“the “Interim Order”) entered June 25, 2018 and the Preliminary Injunction, and in support thereof shows the Court as follows:

1. The underlying cause of action in this case is a dispute concerning various commercial agreements between the parties. As part of those commercial agreements, accounts from the sale of automobiles to third parties were created (the “Vehicle Buyer Accounts”). Collection of and accounting for these Vehicle Buyer Accounts was the underlying basis for much of the dispute which gave rise to both the Interim Order and the Preliminary Injunction.

2. Although subsequent to the Interim Order, and dealing with several of the issues addressed by the Interim Order, the Preliminary Injunction did not replace the requirements of the Interim Order. Indeed, paragraph 89 of the Preliminary Injunction clearly evidences that it was the intention of the Court for the Interim Order to remain in effect.

3. Debtor/Plaintiffs have failed and continue to fail to comply with the mandates of the Interim Order. Specifically, the Debtor/Plaintiffs were to store the vehicles repossessed under the Vehicle Buyer Account at Manheim Auto Auction in Statesville, NC, pending further Order of the Court (Interim Order, Ordering Paragraph 9) and were directed to provide complete, accurate, and current data concerning collections of the Vehicle Buyer Accounts to the Defendants on a daily basis, also pending further order of the Court (Interim Order, Ordering Paragraph 2). Indeed, that latter obligation was further fleshed out by Ordering Paragraph D of the Preliminary Injunction.

4. Further, upon information and belief, Debtor/Plaintiff has sold at least some of the Vehicle Buyer Accounts to third parties, without notice to the Court or the Defendants. Such sale of accounts would certainly be in opposition to the spirit of both the Interim Order and the Preliminary Injunction, both of which clearly sought to preserve the status quo as to the Vehicle Buyer Accounts and their proceeds until this matter is fully and finally adjudicated.

5. If these accounts are being sold without the opportunity for this Court and the parties to review the terms of such sale, there is a significant potential immediate and irreparable prejudice to the Defendants, should it be determined that these sales are below-market prices or being sold as some type of insider or preferential transfer.

6. Defendants have requested information and documentation concerning the sale of such accounts. Debtor/Plaintiff has indicated that such information and documentation exists, but have refused to supply same to the Defendants absent a *quid pro quo* of the satisfaction of other demands made upon the Defendants by the Debtor/Plaintiff.

WHEREFORE, it is respectfully requested that the Court order:

1. That the Preliminary Injunction be modified to require that any proposed sale of a Vehicle Buyer Account be subject to notice to the parties and approval by the Court;

2. That the Debtor/Plaintiff be required to turn over the documentation and information of any already completed sale of Vehicle Buyer Accounts to the Defendants;

3. That the Debtor/Plaintiff be compelled to immediately comply with the aforesaid requirements of Ordering Paragraphs 2 and 9 of the Interim Order, or show cause as to their failure to do so; and

4. For such other and further relief as the Court may deem just and proper.

This the ____ day of September, 2019

s/ Robert K Trobich

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CERTIFICATE OF SERVICE

I certify that this day I electronically filed and served a copy of the foregoing Motion upon each of the parties to this action through the CM/ECF system for the Western District of North Carolina.

This the ____ day of September , 2019

s/ Robert K Trobich
NC State Bar no. 16190